

**STORAGE NAME:** h0807a.fpr.doc

**DATE:** February 8, 2002

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
FISCAL POLICY & RESOURCES  
ANALYSIS**

**BILL #:** HB 807

**RELATING TO:** Florida Retirement System

**SPONSOR(S):** Representative(s) Fasano

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
  - (2) FISCAL POLICY & RESOURCES YEAS 10 NAYS 0
  - (3) FISCAL RESPONSIBILITY COUNCIL
  - (4)
  - (5)
- 

**I. SUMMARY:**

The Public Employee Optional Retirement Program (PEORP), is an optional defined contribution retirement program, within the Florida Retirement System (FRS). The plan is non-contributory, meaning the employer pays the full cost of the retirement benefit. Public employees have the opportunity to choose to participate in either the defined benefit retirement program or the defined contribution program.

House Bill 807 will:

- establish a disability benefits program under the PEORP;
- synchronize the due dates for employer contributions under the FRS Pension Plan and the FRS Investment Plan;
- conform second choice election options for local government employees to the options available to other employees;
- synchronize present value calculations with enrollment periods;
- update contribution rates for the FRS Investment Plan disability program;
- amend provisions related to death benefits payable under the FRS Investment Plan to require spousal notification whenever the designated primary beneficiary is someone other than the spouse; and,
- update certain distribution provisions to conform to recent law changes.

The bill is effective July 1, 2002.

The Committee on State Administration adopted two amendments, now traveling with the bill, to require that employer contributions for PEORP participants be deposited in the Clearing Trust Fund (to be created in a separate bill) and to provide criteria for employees to qualify for state group insurance participation upon termination of employment.

On February 8, 2002, the committee on Fiscal Policy and Resources adopted one amendment. The amendment allows the Department of Management Services to contract with private sector companies to administer the disability program. The amendment grants authority to the Department to implement an alternative method of administering the disability benefit program, including the use of commercial insurance.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

This bill creates two elements of the PEORP, a disability retirement program and a death benefit program. However, these programs are necessary to create a benefit package in the PEORP that is equivalent to the benefit package in the defined benefit program. Additionally, funding for these programs in PEORP merely shifts employers' contributions from the defined benefit retirement program to the PEORP.

The bill reduces the personal responsibility of employees by reducing the opportunity of employees to seek private disability insurance that would apply in the event employees are disabled and must retire.

B. PRESENT SITUATION:

**The Public Employee Optional Retirement Program (PEORP)**

Chapter 2000-169, L.O.F., created s. 121.4501, F.S., which regulates an optional defined contribution retirement program, the Public Employee Optional Retirement Program (PEORP), within the Florida Retirement System. The plan is non-contributory, meaning the employer pays the full cost of the retirement benefit. Public employees have the opportunity to choose to participate in either the defined benefit retirement program or the defined contribution program.

The PEORP is administered by the Trustees of the State Board of Administration (SBA).

Unlike the defined benefit retirement program, the PEORP offers retirement payments that are not fixed for a lifetime. Rather, a participant may elect to receive the benefits in a lump-sum, in a lump-sum distribution that is rolled over to another qualified investment, or in periodic distributions. However, both plans are specifically regulated under the Internal Revenue Code.

Chapter 2000-169, L.O.F., provides a phase-in schedule for current employees to elect participation in the optional program. Employees of state entities are given the option to join the optional program between June 1, 2002, and August 31, 2002; employees of education-related employers between September 1, 2002, and November 30, 2002; and, other local government employees between December 1, 2002, and February 28, 2003.

**Disability Retirement Benefits**

Regular Disability is granted for an illness or injury from natural causes or an accident not related to employment. Currently, to be eligible for regular disability, a member must complete 5 to 8 years of creditable service to be entitled to a monthly disability. The minimum annual regular disability

benefit is 25 percent of average final compensation for the benefit that is payable to the member during his or her lifetime.

Disability in line of duty is defined under s. 121.021(13), F.S., as “an injury or illness arising out of and in the actual performance of duty required by a member’s employment during his or her regularly scheduled working hours or irregular working hours as required by the employer.” Unlike regular disability, a member is eligible for in-line-of-duty disability benefits from the first day of employment. Special Risk Class members receive a minimum annual in-line-of-duty disability benefit of 65 percent of average final compensation for the benefit that is payable to the member during his or her lifetime. For members of other classes of FRS, the minimum in line of duty disability benefit is 42 percent of average final compensation.

**C. EFFECT OF PROPOSED CHANGES:**

This bill synchronizes the employer contribution deposit dates for contribution to PEORP employee accounts with those contribution dates for employees in the FRS.

This bill creates a disability retirement program for those in the PEORP. This bill creates a death benefit regime for the survivors on an employee in the PEORP. These two benefit programs are analogous to the existing disability and death benefit programs for employees in the FRS.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section one.** Amends s. 121.052(7) F.S., relating to the elected officers class of the FRS to clarify that contributions from employers of members of this class are due and payable no later than the 5<sup>th</sup> working day of the month immediately following the month during which the payroll period ended.

**Section two.** Amends s. 121.055(3) F.S., relating to the senior management class of the FRS to clarify that contributions from employers of members of this class are due and payable no later than the 5<sup>th</sup> working day of the month immediately following the month during which the payroll period ended.

**Section three.** Restructures and amends s. 121.071(5), F.S., to clarify due dates for employer contributions. Restructures the subsection to provide ease of reading. Creates s. 121.071(5)(a)1, F.S., and establishes that effective October 1, 1978, contribution dues under this section are due by the 25<sup>th</sup> day of the month immediately following the month during which the payroll period ended. Creates s. 121.071(5)(a)2, F.S., to provide that contributions due under s. 121.071(1) [retirement contribution rates] and (4) [retiree health insurance subsidy contribution rates] are due no later than the 5<sup>th</sup> working day of the month immediately following the month during which the payroll period ended. Creates s. 121.071(5)(b), F.S., that addresses circumstances of delinquent contribution payments.

**Section four.** Amends s. 121.4501, F.S., relating to the PEORP. Amends 121.4501(2) F.S., to define “average monthly compensation” to mean one-twelfth (1/12) of average final compensation, and to define “covered employment” to mean employment in a regularly established position as defined in s. 121.021(52), F.S. That section provides that a regularly established position for a state agency is paid pursuant to or authorized by Chapter 216, F.S., or for a local agency a position in existence for a period beyond 6 consecutive months.

Amends s. 121.4501(3)(c)2, F.S., to provide fixed estimate dates to determine estimated creditable service and estimated average final compensation under the defined benefit program for purposes of determining the present value of employees accumulated benefit obligation for purposes of

enrolling the PEORP. For state employees, the initial estimate will be made as of midnight, June 30, 2002; for district school board employees, midnight, September 30, 2002; and for local government employees, midnight December 31, 2002.

Additionally, for employees that have creditable service and are hired by an employer after the window for that employee group has opened, the estimated value of the accumulated benefit obligation is set as of midnight on the last day of the month before the employee's enrollment date in the PEORP.

Finally, amends other portions of this subsection to conform references to estimating date to these fixed dates.

Amends s. 121.4501 (7) and (16) , F.S., to provide that retirement benefits under the PEORP and disability benefits under the PEORP are to be paid in accordance with s. 121.591, F.S. (created in section 6 of this bill).

**Section five.** Amends s. 121.571 (3) F.S., to adjust contribution rates for contributions to disability accounts of employees in the PEORP. Provides that these contributions are to be deposited in the disability account of the Florida Retirement System Trust Fund and are to be separately accounted for and to be used to provide disability coverage for participants in the PEORP. The rates for disability contributions, effective July 1, 2002, for the retirement member classes are as follows:

- Regular Class: 0.25%
- Special Risk Class: 1.33%
- Special Risk Administrative Support Class: 0.45%
- Elected Officers Class:
  - Legislators 0.41%
  - Governor, Lt. Governor & Cabinet Officers 0.41%
  - St. Attorneys & Public Defenders 0.41%
  - Justices & Judges 0.73%
  - County Elected Officers 0.41%

Amends s. 121.571(7), F.S., to provide that contributions made pursuant to this section are paid no later than the 5<sup>th</sup> working day of the month immediately following the month during which the payroll period ended.

**Section six.** Creates s. 121.591, to provide for the payment of benefits under the PEORP. Provides the payment of normal (retirement) benefits, disability retirement benefits, and death benefits under the PEORP. Benefits may be paid out in one of three ways: in a lump-sum distribution to the participant; in a lump-sum amount payable to an eligible retirement account of the participant; and in periodic distributions (as it would under the defined benefit plan).

Creates s. 121.591(1) to provide for the payment of normal benefits. Creates subsection (2) to provide for the payment of disability retirement benefits. This subsection provides the eligibility requirements for claiming a disability retirement benefit; establishes how benefits are to be computed; and addresses the event of a participant recovering from a disability. This paragraph also provides for the disability of a justice or judge pursuant to the provisions of Art. V of the Florida Constitution. Creates subsection (3) to provide for the payment of death benefits under the

PEORP. Creates subsection (4) to provide for limitations on legal process to attach the benefits payable to a participant in the PEORP.

**Section seven.** Provides for the Legislative determination of an important state interest.

**Section eight.** Provides an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Department of Management Services, the funding source is disability contributions made by state and local government employers on behalf of their FRS employees who are FRS Investment Plan participants. The costs below reflect the projected employer costs systemwide based on the adjusted rates as recommended by the Mercer Study and provided under section 2 of HB 807, if we assume that *half* of the members of the FRS Pension Plan elect to transfer to the FRS Investment Plan. In the FRS Pension Plan, these costs are embedded in the retirement contribution rate. The rate adjustments implemented in this bill would result in an *overall reduction* in the amount of required employer contributions.

2. Expenditures:

According to the Department of Management Services, costs reflect the systemwide cost to FRS *state* government employers attributable to the FRS Investment Plan disability benefit program based on assumptions described under paragraph a.

Year 1	FY 02-03	\$11,242,000
Year 2	FY 03-04	\$11,804,000
Year 3	FY 04-05	\$12,395,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See III. A.1. above

2. Expenditures:

According to the Department of Management Services, the costs reflect the systemwide cost to FRS *local* government employers attributable to the FRS Investment Plan disability benefit program based on assumptions described under paragraph a.

Year 1	FY 02-03	\$29,585,000
Year 2	FY 03-04	\$31,064,000
Year 3	FY 04-05	\$32,617,000

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Management Services, HB 807 carries out the mandate of the Legislature in creating a disability benefit program for the FRS Investment Plan similar to the disability benefit program afforded to members of the FRS Pension Plan. Program costs would be funded from four sources:

By employer contributions made under s. 121.571(3), F.S.

By transferred proceeds from the disability retiree's investment account(s);

By transferred funds representing any remaining present value disability retiree may have under the FRS Pension Plan; and,

By interest and earnings on such moneys.

One caution: The Mercer study on which the contribution rates found in this bill are based does not explicitly recognize that the vesting period for regular disability benefits is reduced from 10 years to 8 years, although the study does specifically refer to the legislation which effected this vesting change. If Mercer's estimates were based on the longer vesting period, the funding could ultimately need to be increased slightly.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill requires local governments to expend funds. However, this bill may meet an exception to the constitutional mandate provisions because there is a Legislative statement of important state interest and the bill requires similarly situated persons to comply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Department of Management services is authorized to adopt rules to implement the bill provisions creating the disability retirement benefit and death benefit programs for participants in the PEORP.

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C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on State Administration at its January 30, 2002, meeting adopted two amendments, now traveling with the bill, which require that employer contributions for PEORP participants be deposited in the Clearing Trust Fund (to be created in a separate bill) and to provide criteria for employees to qualify for state group insurance participation upon termination of employment.

The amendment concerning deposit of contributions into the Clearing Trust Fund contains directory language that should be placed in the directory paragraph of the bill section. It should be removed from the text of the bill and placed in the appropriate location in the directory paragraph.

On February 8, 2002, the committee on Fiscal Policy and Resources adopted one amendment. The amendment allows the Department of Management Services to contract with private sector companies to administer the disability program. The amendment grants authority to the Department to implement an alternative method of administering the disability benefit program, including the use of commercial insurance.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

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